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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,642	01/29/2001	Nils B. Lahr	39551A	6755

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EXAMINER

EDELMAN, BRADLEY E

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/770,642

Applicant(s)

LAHR, NILS B.

Examiner

Bradley Edelman

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 January 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 1-15 and 20-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-19 and 35-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/26/02, 6/21/01.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 1/13/05.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This Office action is a first action on the merits of this application. Claims 1-38 are presented for examination. Claims 1-15 and 20-34 have been withdrawn as being drawn to a non-elected invention.

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-15 and 20-34, drawn to a multi-tiered data distribution network, classified in class 709, subclass 203.
  - II. Claims 16-19 and 35-38, drawn to a network system for packaging data streams, classified in class 709, subclass 231. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as distributing data throughout the network so it is available at multiple points, and invention II has separate utility such as collecting user data to determine how to stream data from a distribution center. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above, the search required for Group I is not required for Group II, and the inventions have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Alan Weeks on January 11, 2005 a provisional election was made with traverse to prosecute the invention of Group II, claims 16-19 and 35-38. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-15 and 20-34 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

2. The disclosure is objected to because of the following informalities:

On pages 1-2, the status of related cases must be updated. Patent Application numbers and/or patent numbers should be added where applicable, and all references to attorney docket numbers should be removed.

On page 8, lines 1-2 appear to contain a typographical error ("downlink can also has the capability").

On page 9, line 32, the number 14 is incorrect and should read "16."

On page 13, lines 12 and 13, references to "Fig. 5" should actually be to Fig. 7.

On page 15, line 20, the phrase "as discussed above an in more detail below" appears to have a typographical error. The word "an" should read "and."

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 16-19 and 35-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "substantially directly" in claims 16 and 35 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claims 17-19 and 36-38 depend from claims 16 and 35 respectively and are thus rejected for the same reasons.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 16-19 and 35-38 are rejected under 35 U.S.C. 102(e) as being anticipated by Hendricks et al. (U.S. Patent No. 6,160,989, hereinafter "Hendricks").

Note: the term “substantially directly” has been interpreted as meaning “not across a standard Internet backbone,” as described on page 11, lines 25-29 of the specification.

In considering claim 16, Hendricks discloses a data server (“headend”) adapted for use as one of a plurality of data servers in a distributed data delivery network, to serve data to respective users (“set-top terminals 220”), said distributed data delivery network including a connection network (“cable distribution network;” Fig. 23) connecting said plurality of data servers in said distributed data delivery network, and a content distributor (“operations center 202”), adapted to deliver data to said data servers (col. 9, lines 5-7), said data server comprising:

A receiver, adapted to receive data not across a standard Internet backbone from said content distributor while bypassing said connection network (col. 9, lines 4-13, Fig. 1; wherein the headend receives data from the operations center via satellite);

A data storage, adapted to store at least a portion of said data received by said receiver (col. 10, lines 10-19, wherein the headend must store the data before forwarding it to the users); and

A user information analyzer, adapted to analyze information from said respective users pertaining to data to be provided to said users (col. 10, lines 15-19, 52-67 “cable headend 208 acts as a network controller 214 by receiving information from each set top terminal 220 and passing such information on to an information gathering site”), and to provide user information to said content distributor to affect distribution of said data by said content distributor to said data servers (col. 10, lines 17-19).

In considering claim 17, Hendricks further discloses a data storage controller, adapted to assess said data received by said receiver to determine which of said data is stored in said data storage (col. 10, lines 28-38, wherein the storage controller is inherent to allow the headend to determine which stored information to send to which users).

In considering claim 18, Hendricks further discloses that said content distributor is adapted to deliver said data as streaming data to said data servers, and the user information analyzer is adapted to provide the user information to the content distributor to affect an order in which said content distributor includes different types of data in said data stream for delivery to said data servers (col. 9, lines 4-7, 26-57).

In considering claim 19, Hendricks further discloses a data delivery component, adapted to deliver data to at least one of the respective users in response to a delivery command provided by a data delivery director in said distributed data delivery network (col. 10, lines 28-51).

Claims 35-38 present a method for performing the same steps disclosed in respective claims 16-19, and are thus rejected for the same reasons.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley Edelman whose telephone number is 571-272-3953. The examiner can normally be reached from 9 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached at 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Bradley Edelman*

BE

January 12, 2005